IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 107 OF 2004

Prakash Chandrappa Channur .. Appellant

versus

The State of Maharashtra .. Respondents

...

Mr.R.C. Makhija for the appellant.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 4th October 2004.

ORAL JUDGEMENT :-

1. Heard the learned counsel appearing on behalf of the accused and the learned APP appearing on behalf of the State.

2. The appellant is challenging the judgement and order passed by Addl.Sessions Judge for Gr.Bombay in Sessions Case no.1440 of 1995 dated 20th December

2002. The accused appellant was convicted under the provisions of section 307 of the IPC and sentenced to suffer RI for five years and to pay fine of Rs.1,000/- in default to undergo RI for one month.

2. The prosecution case is that the accused and his family were residing in the adjoining hut of the complainant and her husband. In fact, there was a common partition wall made of tin sheets between two houses. There was a quarrel between the wife of the accused and the complainant. The wife of the accused had assaulted the complainant and therefore, a N.C complaint was lodged against her. In the evening when the accused and the husband of the complaint returned home, the complainant and her husband went to the Doctor and when they were returning at 9.00 p.m, the accused came from behind and stabbed the complainants husband with a knife and thereafter ran away. A complaint is lodged and accused and the husband of the complainant was taken to the hospital where he was operated by the Doctors. The trial Court convicted the accused u/s.307 of the IPC and sentenced him to suffer RI for five years. The appellant is challenging the said judgement and order. The learned counsel appearing on behalf of the appellant has taken

me through the evidence adduced by the prosecution and judgement and order passed by the trial Court. He submitted that the evidence u/s.307 was not made out from the evidence adduced by the prosecution. He submitted that from the evidence of the prosecution, it was clear that the accused also had sustained injuries and that one of the injury was an incised wound and as such, could not be termed as a minor injury which could have been overlooked by the prosecution. It was submitted that the prosecution has not explained the injuries which were suffered by the accused and therefore, the genesis of the offence has not been brought on record by the prosecution and no explanation has been given so far as injury on the accused are concerned and therefore, an adverse inference has to be drawn against the prosecution. He submitted that the ingredients of section 307 have not been proved by the prosecution. He submitted that in order to prove that an offence u/s.307 is committed, the prosecution has to prove that the accused intended to cause death of the deceased or had knowledge that the injuries which are caused by the accused are sufficient in the ordinary course of nature to cause death. He submitted that even if the prosecution case is accepted as it is, the accused according to the

prosecution had come from behind the complainant and had inflicted two wounds and had thereafter fled the scene of the offence. It was submitted that therefore, if the accused had an intention of committing the murder of the deceased, he would have waited to ensure that the deceased died as a result of the injury. It was further submitted that the knife with which the injuries were cause could not be said to be a lethal weapon as though the blade was 6" in length, it was hardly few centimetres in breadth. He has taken me through the evidence and also the judgement of the trial Court and has assailed the findings of the trial Court.

3. The learned APP appearing on behalf of the State vehemently opposed the application made by the learned counsel appearing on behalf of the applicant. He has submitted that the complainant was admitted in the hospital on 15th July 1994 and had to be operated for about three hours on account of the injuries which were sustained by him and with great difficulty, his life could be saved and he was finally decided on 24th July 1994 after a lapse of 9 days. He submitted that so far as the injuries which were suffered by the accused are concerned, these injuries were minor

injuries. No adverse inference could be drawn against the prosecution case. He further submitted that from the evidence of the complainant and his wife, the incident has been proved and the act of the accused also had been proved beyond reasonable doubt. He has further drawn my attention to the statement of the accused which is recorded u/s.313 of the Code of Criminal Procedure in which he has admitted his presence at the said site on the date of the incident and also admitted that he had inflicted the said injuries. The learned APP therefore, submitted that the trial Court had in view of the statement of the accused u/s.313 had amended the lesser punishment of 5 years and had therefore, there was no necessity to interfere with the finding given by the trial Court.

4. From the evidence which has been adduced by the prosecution there is no manner of doubt that there was a scuffle between the accused and the complainant. One day prior to the said incident, the complainant's wife and the wife of the accused had a quarrel and wife of the accused had assaulted the complainant's wife and N.C complaint was also recorded and thereafter on the next day, the said incident has taken place. From the evidence of PW no.1 and PW

no.2, it can be seen that they have deposed that the accused had assaulted the complainant's husband with a knife. PW no.1. complainant Anita Sherkhane has stated that the wife of the accused had quarrelled with her on 15th July 1994. She slapped her one year old child and broke the tin sheet of her house. She therefore, lodged a complaint with the police and N.C. no.5000 of 1994 was recorded. In the evening, her husband came back at 8.30 and when they returned from the clinic, the accused came from behind and stabbed her husband with a knife on his stomach and ran away. PW no.2 Mahadeo has also more or less stated that same things as stated by his wife. The prosecution has examined PW no.4 Dr. Sandhya Iyer. She has stated that she did not examine the patient i.e. PW no.2 when he was brought to the hospital. However, he was treated by one Dr.Sarojini Jadhav, Pravin Shirke and two other Doctors viz. Dr.Paulami and Dr.Kumaran. She has stated that all these Doctors were working elsewhere and that she knew their handwriting and signature. On the basis of the case papers prepared by her predecessor, she has stated that the injuries were sufficient in the ordinary course of nature to cause death.

5. From the evidence of PW no.1 and PW no.2, I have no hesitation in coming to the conclusion that the accused had assaulted Mahadeo PW no.2 and that he had inflicted the injuries which were sustained by him. The short question which falls for consideration is whether the said injuries could be categorised as sufficient to cause death or to be termed as grievous injuries. In my view, the trial Court erred in coming to the conclusion that the accused committed an offence u/s.307 of the IPC. Firstly, the injuries which were noticed on the person of the complainant cannot be termed as the injuries which in ordinary course would result in death. The complainant's husband was operated and was discharged within 10 days. Though the injury was incised wound was caused on the left lateral chest wall, it had not penetrated the lungs or the heart but was only peritonium deep. The other two injuries were over the right iliace fessa and left anterior chest which were also superficial in nature. The doctor who has been examined by the prosecution had not treated the PW no.2 and had also not examined him when he was admitted in the hospital. The prosecution could have examined Dr.Sarojini Jadhav who had treated the patient. Apart from that from the deposition of PW

nos.1 and 3, it is clear that the accused had suddenly arrived at the site of the incident and had given two blows and had thereafter run away from the place of the incident. From this evidence, it cannot be said that he had an intention to commit the murder of PW no.2. The size of the blade of the knife also isnot such from which it canbe said that the intention was to commit murder of the complainant's husband. The findings of the trial Court with an offence u/s.307 is committed by the accused will have to be set aside. However, there cannot be any doubt on the evidence of PW nos.1 and 2 that the accused had inflicted those two blows on the stomach of PW no.2 who had to be operated for about two hours and was discharged from the hospital after 9 days. It will have to be held that the accused therefore, committed the offence u/s.326 of the IPC by causing grievous hurt to PW no.2 with a knife.

6. So far as the sentence is concerned, in my view, the sentence will have to be reduced considering the fact that the prosecution has not been in a position to explain the injuries which were suffered by the accused. The medical evidence indicates that the accused had also received one incised wound and

one wound in the said scuffle. The accused in his statement u/s.313 has explained that the prosecution case that he had come from behind and had assaulted PW no.2, was not correct and in fact, had stated that there was a scuffle and the PW no.2 had also assaulted him. The accused is in jail and has already undergone sentence of one year and 10 months. The incident in question had taken place on the spur of the moment on account of the quarrel between the wife of PW no.2 and wife of the accused. Both the accused and the complainant received injuries in the said scuffle. Under these circumstances, I am of the view that the sentence awarded by the Sessions Court should be reduced to the one which the acused has already undergone.

7. In the result, appeal is partly allowed. The conviction under section 307 of the IPC is altered and the accused is convicted u/s.326 of the IPC. The sentence is also altered from five years to the one which the accused appellant has already undergone. The appeal to be released forthwith unless he is required in any other case.

8. Shri Makhija has ably assisted the Court by

referring to the oral and documentary evidence on record.

,l Writ to be sent as early as possible.

10. All concerned to act on a copy of this order duly authenticated by the Court Sheristedar.

V.M. KANADE, J